OPEN GOVERNMENT

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Keeping secrets. The funding public's right to know how local and national government spend money and formulate policy is being abused.

P[illegible]ARL du FRESNE

ACCOUNTABILITY has become a fashionable buzzword in government, but sadly it's a concept more talked about than honoured in practice.

In 1982, Parliament passed the Official Information Act — an admirable piece of legislation conceived by people with a firm conviction that, in the words of US watchdog Ralph Nader, information is the currency of democracy.

The Official Secrets Act, which the 1982 Act superseded, required public servants to keep everything confidential unless they had express permission to divulge it.

The Official Information Act turned that notion on its head, and said essentially that information should be made available unless there was compelling reason to withhold it. That required public servants to cast off decades of conditioning. But in time the Official Information Act bedded down and began to function pretty smoothly, with help from the Ombudsmen and on occasions the courts.

In 1987 Parliament passed the Local Government Official Information and Meetings Act, which ostensibly carried the principle of open government through to the local government sector.

There has generally been less satisfaction with the way this Act has operated. A thick dossier compiled in 1991 by the New Zealand section of the Commonwealth Press Union detailed frequent abuses of the principle behind the Act, which was that local government should become more open, accessible and accountable to the public.

The media's concerns related in particular to the routine exclusion of the public from local councils' deliberations, even on matters as trivial as new street names or Christmas party arrangements. In most cases the agendas provided to the press and public were so vague that they provided no clue to the nature of the business to be discussed. These abuses continue today and demonstrate contempt for democratic process and open government.

Another concern arises from the ability of councils to hold secret conclaves without notification to anyone. As long as no formal resolution or vote is taken, these proceedings are perfectly legal. As a result, it's possible for select groups of councillors to discuss important issues ahead of their formal meeting, agree on an approach, then bulldoze the decision through with a minimum of public discussion.

The situation is not helped by the fact that there is no penalty prescribed in the Act for failure to conduct public business in public.

For all its deficiencies, though, the 1987 Act at least laid down some sort of model for local government. In tandem with the 1982 Act, it created a climate in which doors which had been previously closed to the press and public could in theory at least be prised open. And in the case of the 1982 Act, if not of the 1987 legislation, the effects were dramatic.

Sadly, that heady burst of open government is now starting to look increasingly like a Prague spring. Those Acts still serve as a sort of philosophical beacon, but all sorts of developments are occurring which serve to thwart the intentions behind the legislation.

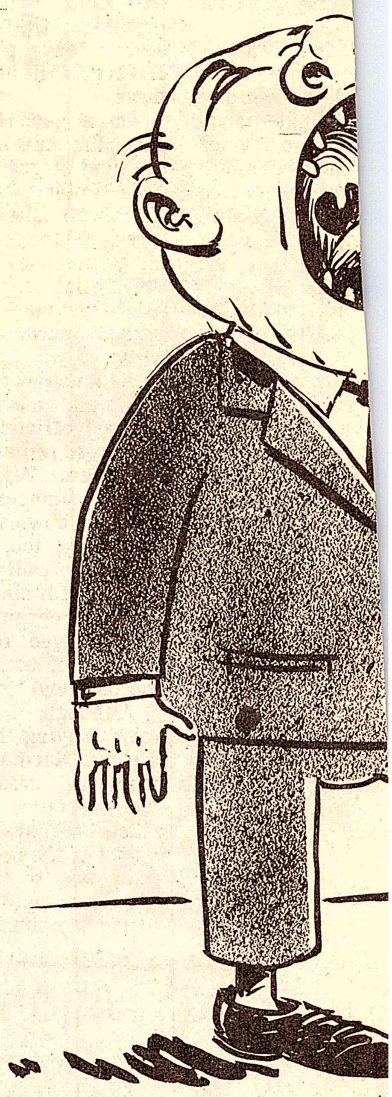
Many of the gains made since 1982 in terms of open government are now being wound back.

There are several ways in which we are regressing. The first results from the corporatisation of Government departments and public utilities. Many former Government departments are now State-owned enterprises operating in a competitive commercial environment. As such they are able to take refuge under the provision in the Official Information Act which permits information to be withheld if the organisation's commercial position might be prejudiced.

The commercial prejudice clause has become an easy way out for SOEs which are approached for information. As a result, legitimate requests for information on matters of public importance can be stalled for months. If and when the information is finally prised out, it has often ceased to be relevant or newsworthy.

One area of intense public interest which is now off-limits is, of course, the public health sector.

The old area health boards conducted their meetings in public, but Crown health enterprises — although covered by the Official Information Act — are not subject to the 1987 Act and so are able to conduct their business in private. Even requests for information under the 1982 Act are routinely rebuffed on the ground of commercial prejudice.



As a result, a vital area of public policy which affects people at the most fundamental level, and to which the taxpayers contribute $4 billion a year, is now to all intents and purposes beyond public scrutiny.

Another problem related to corporatisation of the public sector is that there has been in recent years a vigorous cross-fertilisation between government and the private sector. In many ways this is a positive trend, but it has one undesirable side-effect. Many new generation public sector managers come from a private, corporate culture with no commitment to open information. On the contrary, their commercial backgrounds inculcate in them an instinctive secrecy. This is understandable, but it mili-

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tates against open government.

Public sector restructuring has also seen public utilities such as harbour boards and energy boards, which were previously elected bodies that conducted their business in public, converted into private companies.

Local authority trading enterprises are even excluded from the provisions of the Official Information Act, to which SOEs are at least subject. Thus another area where a massive amount of public money is invested, and where decisions can have a profound impact on the public, is now beyond public scrutiny.

The quest for economic efficiency in the public sector has impacted on freedom of information in at least one other important respect. The emphasis on cost recovery means that information which was traditionally obtainable free now comes at a price.

To cite just a few examples: anyone wanting copies of Employment Court decisions must pay $4000 a year; charges are being levied for copies of High Court judgments; weather forecasts which used to be provided free of charge as a public service are now a commodity under the control of a profit-oriented SOE, and the customer must pay.

Even Statistics New Zealand now charges for even the most simple requests for information, on a variable scale which puts a high price on data which is deemed to be of particular commercial value. Again, economic efficiency is obviously a desirable goal. But at a certain point it can become incompatible with the freedom of information which is essential to an informed democracy. The danger is, of course, that information becomes exclusive, not freely available.

If information is power, and information costs money, then power resides with those who have the money to obtain it.

Another attack on open government has come from an unexpected direction: the Privacy Act. I understood this Act to be primarily concerned with the exchange of data between Government departments such as Inland Revenue and Social Welfare. In fact it is being used by public officials to shut off all manner of information which has traditionally been publicly available.

Universities now refuse to supply newspapers with lists of examination results, though we have seen no evidence that their students were unhappy with this traditional practice.

Hospitals refuse to divulge the name and condition of patients, and in a recent case the police cited the Privacy Act in declining to name a person killed in an accident. This was in direct contravention, incidentally, of the police general instructions.

The evidence suggests that the Privacy Act is being treated by many people in public office as a convenient excuse not to supply information, even the most harmless sort.

This brings to mind a quote from Sir George Laking, the former Chief Ombudsman, who once said: "There is a public service attitude, deeply ingrained and often unconscious, towards the release of factual information. In the eyes of some public servants a fact cannot safely be allowed to emerge alone and unprotected into the public gaze."

The Official Information Act of 1982 went a long way toward eradicating that old public service mentality. Sadly, under the smokescreen of the Privacy Act, it seems to be making a stealthy comeback.

It is worth asking how all these developments square with the Bill of Rights Act of 1990. That Act confers the right, among other things, to "seek, receive and impart information and opinion of any kind and in any form".

Current constraints on availability of information in all sorts of areas, from local authority meetings to public health administration, make a mockery of that.

☐ This is. a summary of a speech Post assistant editor Karl du Fresne gave to an Institute of Public Administration seminar on open government.